

The Preliminary Hearing Order of the Administrative Law Judge should be affirmed.

The Appeals Board agrees with the Administrative Law Judge that claimant, at the time of the accident on December 3, 1992, was an employee of D.G. Robinson Excavation Company. Although claimant had previously performed work for the excavation company as an independent contractor and truck driver, he was working for the company as an employee when he was performing demolition work as a laborer. At the time of the accident, the excavation company was paying claimant \$10 per hour, furnishing most, if not all, of the tools used in the demolition work, and maintained direct control of claimant's work activities. Claimant testified he expected withholdings from his check. These factors, plus others, support the conclusion that claimant was an employee at the time of the accident.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Preliminary Hearing Order of Administrative Law Judge Steven J. Howard entered in this proceeding on December 9, 1994, should be, and hereby is, affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of February, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Michael R. Wallace, Overland Park, KS
Garry W. Lassman, Pittsburg, KS
Robert S. Tomassi, Pittsburg, KS
Thomas A. Hamill, Overland Park, KS
Steven J. Howard, Administrative Law Judge
George Gomez, Director